

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation Provisions)
of the Telecommunications Act of 1996)

SBC Request for Waiver of Coding Digit)
Requirements For Two Remaining Problems)

CC Docket No. 96-128

To: The Common Carrier Bureau

REPLY COMMENTS
BY SOUTHWESTERN BELL TELEPHONE COMPANY,
PACIFIC BELL, AND NEVADA BELL

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Certificate of Service On All Parties In CC Docket 96-128

SUMMARY

The results of recent traffic samples confirm that SBC has already achieved full compliance with the FCC's coding-digits requirements. The record in this proceeding supports the conclusion that there is no harm to IXCs or payphone service providers ("PSPs") caused by the two "problems" SBC identified in its Petition for Waiver, and that it would not be in the public interest for SBC to be required to make changes in its networks to fix such "problems." Doing so would cause a waste of resources, including the additional expenditure of millions of dollars by SBC and PSPs.

The Commission should reject the vague oppositions of ITA and PCIA, which introduce no facts or evidence into the record. AT&T has explained that the two "problems" SBC identified have no effect on AT&T's substantial traffic. There is no evidence that any other IXC or payphone service provider is affected or harmed. APCC agrees that waivers should be granted where problems are truly *de minimis*. Moreover, APCC agrees that the 800 tandem screening issue will disappear as IXCs more completely receive FLEX ANI and that the FCC should order IXCs to be prepared to accept FLEX ANI digits by a date certain.

Accordingly, the Commission should find (1) that the traffic associated with the two once-thought-to-be problems covered in SBC's Petition is *de minimis*, (2) that the costs to fix these two "problems" are not justified, and (3) that requiring that they be fixed would not be in the public interest. The FCC should find that SBC is in compliance and does not need a waiver, and therefore should find that SBC's Petition for Waiver Extension is moot. Alternatively, the FCC should grant SBC a permanent waiver based on the *de minimis* effects.

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REPLY COMMENTS
BY SOUTHWESTERN BELL TELEPHONE COMPANY,
PACIFIC BELL, AND NEVADA BELL

Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, and Nevada Bell (collectively "SBC") file these Reply Comments in response to Comments filed in this proceeding by the American Public Communications Council ("APCC"), AT&T Corp. ("AT&T"), the International Telecard Association ("ITA"), and the Personal Communications Industry Association ("PCIA").¹

I. SBC IS IN COMPLIANCE WITH THE FCC's PAYPHONE CODING DIGIT REQUIREMENTS

None of the Comments filed in this proceeding provide any evidence of any calls or of any payphone compensation being affected by the two remaining FLEX-ANI-related "problems" that SBC identified in its Petition.

¹ SBC and Southern New England Telephone ("SNET") recently merged, filed separate Petitions, and are filing separate Reply Comments.

A. AT&T's And APCC's Comments Are Supportive Of SBC's Position

The largest interexchange carrier, AT&T, expressly states: "Indeed, these problems should have no impact on AT&T calls. AT&T's network does not support 800-to-POTS calling (the '800-to-POTS issue'), and it is capable of receiving Flex ANI (the 'tandem screening issue')."² Thus, from AT&T's perspective, SBC's "problems" are less than *de minimis*; they are non-existent.

APCC states, "Any further waivers should be granted only for violations that are truly *de minimis*."³ Although waivers actually should be granted anytime they are in the public interest, APCC's statement supports granting a permanent waiver to SBC because SBC's "problems" are truly *de minimis*.

1. The 800-to-POTS "Problem" Is Truly De Minimis

APCC incorrectly argues that the 800-to-POTS problem is not *de minimis*. APCC asserts "a problem that affects 0.5% of all payphone calls is likely to affect about 2% of dial-around calls (given that dial-around represents approximately 25% of payphone traffic)," and "[f]or those PSPs served by the problem switches, the problem is likely to affect a much higher percentage of their compensation."⁴

There are several flaws in this argument, which are fatal to it. First, APCC brings in no independent information to support its conclusion that the 800-to-POTS problem affects 0.5% of payphone calls, or to support its leap to this having an effect on 2% of

² AT&T at n. 2.

³ APCC at 5.

⁴ APCC at 12.

"dial-around" calls,⁵ and does not show that any so-called effects cause any harm.⁶ For these "effects" to be harmful, they would have to affect the payment of compensation by IXCs. But APCC's assumption that all the 800-to-POTS calls route to IXCs and, thus, that the lack of FLEX ANI digits on these calls could result in a failure to compensate is dead wrong. As we have seen, 800-to-POTS is never used by the largest IXC, AT&T. Moreover, 800-to-POTS is almost never used by any IXC. Of the 10,510,137 queries for 800 service examined in SBC's two samples, only one query was for an 800 to POTS call that went to an IXC.⁷ All the others routed to SBC's own 800 service, and did not affect SBC's payment of compensation on the calls.

Second, APCC is wrong to discuss the problem as switch-specific and, thus, as having a disproportionate effect on PSPs using certain switches. The 800-to-POTS "problem" affects 800-to-POTS calls regardless of the switch-type. The use of ANI "24" for 800 calls routed to a POTS number, which identifies the calls as 800, but not as

⁵ The term "dial-around calls" most commonly means 101XXXX calls to access an IXC other than the pre-subscribed IXC. An end user would not dial around in this manner to make a free 800 call. If APCC is referring to 800 calls with a credit card, SBC's experience from sampling calls is that 800 calls routed to an IXC would be 800 to carrier identification code ("CIC") calls, not 800 to POTS calls. APCC assumes that all 800 to POTS calls occur on dial-around-calls to IXCs. APCC offers no evidence or logical explanation to support this assumption, and as discussed above SBC's samples show just the opposite – almost none go to IXCs. Thus, APCC's "2%" is far too high to be meaningful in representing calls to IXCs from whom compensation might be affected.

⁶ The results of SBC's recent traffic samples show that 800 to POTS represented 0.37% and 0.22% of the 800 queries in the two samples. Those numbers are *de minimis* in themselves. But even those numbers significantly overstate any potential effect on the passage of FLEX ANI, because one, and only one, call required routing to an IXC.

⁷ January 20, 1999, letter to Magalie Roman Salas, FCC, from Chris Jines, SBC, at 2. Of the 10,510,137 queries, 32,580 were 800 to POTS calls, but only one of those calls was on an IXC's network, and there is no reason to believe that compensation was not paid on even that one call.

payphone originated, was standardized and adopted by all switch vendors. Thus, to the extent such calls exist, they would be evenly distributed.

2. **The *De minimis* 800 Tandem Screening "Problem" Exists Only Because Not All IXCs Have Met Their Obligation To Request FLEX ANI**

APCC relies on SBC's January 20, 1999 ex parte letter, which SBC served on all parties, to explain SBC's position that the 800 tandem screening "problem" affects only 0.17% of payphones.⁸ APCC does not express any disagreement with that number,⁹ or with "SBC[s] claim[that] the problem will be largely resolved with the replacement of its DMS 10s sometime in 1999."¹⁰ Nonetheless, APCC's description of the "problem" does not make it clear that not all calls from payphones to IXCs through the tandems are affected. The only calls affected are the small percentage of 800 calls that originate from the few payphones that are served by SBC end offices that do not perform the screening function. Moreover, the effect is that SBC always sends the FLEX ANI digits to the IXCs on these calls. The fact that AT&T and other large carriers have requested FLEX ANI further reduces any potential impact of these calls. Thus, only a small percentage of the 800 calls which originate from this extremely small (.17%), and decreasing, number of payphones would be directed to carriers that have not currently

⁸ APCC at 8.

⁹ SBC derived that number based on the few end office switches that SBC has that do not perform the screening. The number of 800 calls that are not queried, and thus not screened, at the end office but, instead, are queried at the tandem is *de minimis*. SWBT also sampled one node to determine the number of 800 tandem queries versus total (tandem and end office) 800 queries made. Again, the result (0.24%) was *de minimis*. Moreover, there is no evidence that even those few calls were negatively affected.

¹⁰ APCC at 8.

accepted FLEX ANI. As of June 1998, SBC has deployed Flex ANI on 100% of payphone lines. However, SBC has not received any complaints of dropped calls from PSPs or requests from IXC's not to forward the digits.

Moreover, APCC agrees with SBC's proposed resolution of the problem, under which it will disappear rapidly as IXC's meet their obligation to prepare themselves to receive FLEX ANI.¹¹ APCC correctly argues that "the Commission must explicitly direct IXC's to prepare to receive FLEX ANI by a date certain...."¹²

As SBC explained in its Petition, the Commission should indeed eliminate the need for 800 tandem screening and, thus, this "problem" by clarifying that IXC's are required to prepare their switches for the receipt of FLEX ANI and to request it by the time that LEC's have implemented it in all their switches.¹³ The Commission required LEC's to implement FLEX ANI because IXC's said that it was needed.¹⁴ LEC's have expended substantial resources on that implementation. IXC's should not be allowed to pick and choose when and where they will request FLEX ANI, as many IXC's are doing. As the Bureau explained, "IXC's are responsible for requesting FLEX ANI" for use in paying compensation to PSP's on a per-call, instead of per-phone, basis "[o]nce FLEX ANI is available for payphones served by a LEC."¹⁵ Earlier, the Bureau had stated that "IXC's must request, test, and coordinate with LEC's to obtain [payphone specific coding

¹¹ APCC at 9-11.

¹² APCC at 10.

¹³ SBC's Petition at 14.

¹⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd 20,541, para. 98 (1996).

¹⁵ *Memorandum Opinion and Order*, CC Docket 96-128, 13 FCC Rcd 10893, n. 58 (1998).

digits] under carrier to carrier procedures to ensure that there are no problems in providing and receiving the FLEX ANI digits for a particular IXC or LEC."¹⁶ To speed this process, the Bureau required LECs to "simplify[] the service request process" for IXCs to order FLEX ANI.¹⁷ SBC has done so, and the IXCs should meet their responsibilities to request FLEX ANI.

3. APCC's Request For Protectionism Must Be Denied

Although its position would have a *de minimis* effect on SBC, APCC is absolutely wrong in its position that the FCC should grant further waivers only on the condition that LECs agree "to hold each affected PSP harmless for any resulting shortfall in compensation."¹⁸ APCC's proposal would place all the risk of the complex implementation of FLEX ANI on the LECs. This would be both unfair and illegal. As APCC admits, the two remaining "problems" affect LEC PSPs and independent PSPs alike.¹⁹ There is no justification for placing all the risk on the LECs. Moreover, APCC's stated concerns about compensation are irrelevant to SBC's remaining two FLEX ANI "problems." AT&T's payment of compensation is the only example that APCC gives concerning an IXC's "major and pervasive anomalies in payment patterns that cast great doubt on whether per-call tracking is being performed with any accuracy or consistency at all."²⁰ As AT&T has explained, however, the two "problems" do not

¹⁶ *Memorandum Opinion and Order*, CC Docket No. 96-128, 13 FCC Rcd 4998, para. 37 (1998).

¹⁷ *Id.*

¹⁸ APCC at 5. See, also, APCC at 9 and 12.

¹⁹ APCC at 11.

²⁰ APCC at 4.

affect AT&T at all and cannot be affecting its payment of compensation. APCC's request for protectionism must be rejected.

B. PCIA And ITA Do Not Show That Any Calls Are Affected By The Two Remaining "Problems"

PCIA does not say that any calls have been, or will be, affected or that SBC is out of compliance. Rather, PCIA conclusively states that "the Commission should permit the coding digit requirement full effect."²¹ The effect that PCIA speaks of, however, relates to "payphones for which payphone-specific coding digits were not available."²² SBC has had FLEX ANI implemented on all payphone lines for all payphones in its territories since June of last year. The issues identified by SBC have not resulted in any IXCs having to pay compensation on a flat-rate basis, as complained of by APCC. Moreover, as AT&T stated, SBC's issues have had no effect on AT&T's payment of compensation, and yet AT&T is the specific example used by PCIA in its opposition to SBC and the other LECs.²³

ITA (1) does not show that the two "problems" affect any calls, and (2) does not introduce any facts or other evidence. ITA simply makes broad, unsupported, and incorrect allegations.

ITA states that "PSP compensation has been mired in confusion because both carriers and payees cannot practically verify who owes what to whom."²⁴ But ITA gives no facts or evidence of any kind to support this statement, or to disprove the hard facts

²¹ PCIA at 3.

²² PCIA at 3.

²³ PCIA at 4.

²⁴ ITA at 2.

that SBC has provided. Certainly any confusion is not caused by the *de minimis* "problems" identified by SBC. SBC has been providing FLEX ANI digits on all payphone lines since June of last year, and only the *de minimis* 800-to-POTS calls do not pass payphone-specific digits. These *de minimis* calls cannot be the cause of compensation problems.

ITA also states that SBC and other LECs "have not exercised due diligence to comply with the Commission's rule."²⁵ Again, however, ITA introduces no facts or evidence of any kind. ITA's statement is belied by SBC's detailed response to the Network Services Division's questions concerning implementation planning and vendor negotiations regarding FLEX ANI, and by the very fact that SBC has identified these *de minimis* "problems" in its implementation efforts. SBC has been diligent in the implementation of FLEX ANI from the beginning and up until the so-called "eleventh hour" when it filed its Petition, which it filed because it had not yet uncovered the proof that the two remaining "problems" are *de minimis*.²⁶

ITA also incorrectly states that these issues create a considerable problem for prepaid phone card providers, and requests an exemption from providing payphone compensation.²⁷ First, as we have demonstrated, the 800 tandem screening issue does not suppress FLEX ANI digits; it results in the digits being passed whether or not they are requested. Second, we have demonstrated that 800 to POTS is almost never being used by IXCs. A prepaid phone card using 800 service to access an IXC does not use

²⁵ ITA at 3.

²⁶ See, January 8, 1998 letter to Anna M. Gomez, Network Services Division, from Jeffrey B. Thomas, SBC, CC Docket No. 96-128.

²⁷ ITA at 4-5.

800-to-POTS, but rather 800-to-CIC. SBC passes FLEX ANI on 800-to-CIC calls. Providing ITA the exemption it seeks, which would exempt substantial amounts of traffic, would be in direct violation of Congress' mandate that PSPs be "fairly compensated for each and every completed intrastate and interstate call using their payphone...."²⁸

C. **There Is No Evidence Of Any Effect On Any IXC Or Payphone Service Provider**

AT&T and the other parties who filed Comments are not the only ones who have been unaffected by the two remaining "problems" that SBC identified. In its Petition, SBC stated that "the number of payphone calls affected by the remaining two problems appears to be *de minimis*."²⁹ In Reply to MCI's Opposition, SBC and SNET pointed out that MCI did not say that the two remaining "problems" affected its traffic, and we explained why they would not affect it.³⁰ Subsequently, in response to questions from the Network Services Division, SBC explained:

SBC is not aware of any harm that has resulted from our inability to pass or screen FLEX ANI on these two call types, and the record in this proceeding has not shown any such harm. The pending comment cycle on SBC's and others' waiver petitions will provide a vehicle for parties to reveal actual harm, if any, that would result from SBC not fixing the two problems.³¹

²⁸ 47 U.S.C. Section 276.

²⁹ SBC's December 9, 1998 Petition at 8.

³⁰ SBC's and SNET's December 29, 1999 Joint Reply to MCI WorldCom at 4-5.

³¹ January 8, 1998 letter to Anna M. Gomez, Network Services Division, from Jeffrey B. Thomas, SBC (emphasis in the original).

In a January 19, 1999 *ex parte* meeting, described in SBC's *ex parte* letter, SBC explained:

In the process of creating a better record, SBC found that its waiver request not only was warranted by lack of any harm to the public interest, but was unnecessary to protect the public interest. Today's meeting was requested by SBC to submit additional relevant information that SBC believes renders its Petition for Waiver Extension unnecessary. This information included the results of traffic samples that show the number of calls that would be affected by remaining problems are *de minimis* and, thus, that SBC is in compliance with the FCC's payphone coding digit requirements.³²

In order to ensure that parties had a full notice, opportunity, and incentive to introduce into the record any actual harm from the two remaining "problems," SBC served by first-class U.S. mail on all parties in this proceeding the January 20, 1999 *ex parte* letter, and an attachment showing results of traffic samples. APCC discussed numbers from this *ex parte* letter and attachment,³³ showing that parties did indeed have an opportunity to comment on the *ex parte* information.

As discussed above, no evidence of harm has been introduced in the Comments or elsewhere.

D. The Cost Of Fixing The Two Remaining "Problems" Is Not De Minimis; It Greatly Outweighs The De Minimis Benefit

SBC's *ex parte* letter also explained that although the effect of the two remaining "problems" is *de minimis*, the cost of adjusting switches to "fix" the two "problems" is not. If the FCC agrees with SBC that it would not be in the public interest to expend the

³² January 20, 1999, letter to Magalie Roman Salas, FCC, from Chris Jines, SBC.

³³ APCC at 8. APCC did not cite SBC's letter, but that is the only filing in which SBC used the number 0.17% and explained that even this *de minimis* number would be dropping significantly.

millions of dollars required to fix these two "problems," SBC would reduce its current tariffed rates to PSPs for FLEX ANI to reflect the decrease in the amount of money spent to implement FLEX ANI for per call compensation.

II. CONCLUSION

Although the two "problems" covered in SBC's Petition always appeared to be *de minimis*, SBC's focus from the beginning was on finding and fixing any problems associated with passing payphone-specific digits. SBC was driven to consider more closely whether it already fixed all the real problems by the scarcity of LEC petitions for waivers for time to fix these remaining two "problems" (involving the same types of switches that all LECs have in their networks) and the lack of complaints from anyone regarding these "problems." The results of recent samples confirm that SBC already achieved full compliance. Accordingly, SBC believes that there is no harm to any IXCs or payphone service providers caused by the two "problems," and that it would not be in the public interest for SBC to be required to make changes in its networks to fix such "problems." Doing so would cause a waste of resources, including the additional expenditure of millions of dollars by SBC and payphone service providers.

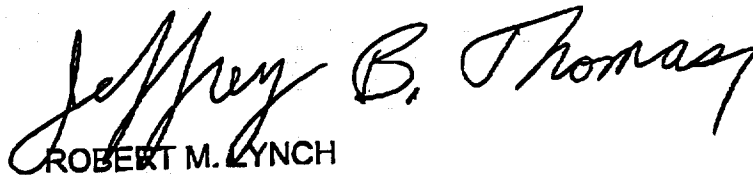
The Commission should reject the vague oppositions of ITA and PCIA, which introduce no facts or evidence into the record. AT&T has explained that the two "problems" SBC identified have no effect on AT&T's substantial traffic. There is no evidence that any other IXC or payphone service provider is affected or harmed. APCC agrees that waivers should be granted where problems are truly *de minimis*. Moreover, APCC agrees that the 800 tandem screening issue will disappear as IXCs more completely receive FLEX ANI and that the FCC should order IXCs to be prepared to

accept FLEX ANI digits by a date certain. Accordingly, the Commission should find (1) that the traffic associated with the two once-thought-to-be problems covered in SBC's Petition is *de minimis*, (2) that the costs to fix these two "problems" are not justified, and (3) that requiring that they be fixed would not be in the public interest.

The FCC should find that SBC is in compliance and does not need a waiver, and therefore should find that SBC's Petition for Waiver Extension is moot. Alternatively, the FCC should grant SBC a permanent waiver based on the *de minimis* effects. The FCC should leave open the ability of parties to introduce evidence in the future that changes have occurred and that these or other network design criteria have come to create problems in the passage of FLEX ANI which are not *de minimis* in effect. If at that time the FCC agrees that a real problem has developed, recovery of costs to fix such future problem should be allowed.

In no event, should the Commission grant (1) APCC's request that the LECs insure PSPs against any risk of lost compensation from FLEX ANI implementation, or (2) ITA's request that prepaid phone card providers receive a waiver from providing payphone compensation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jeffrey B. Thomas".

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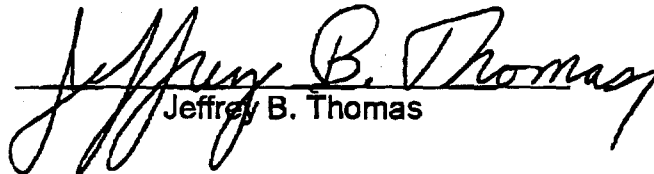
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CERTIFICATE OF SERVICE

I, Jeffrey B. Thomas, certify that I took the appropriate steps to ensure that the foregoing Reply was served on February 5, 1999, either by 1st class U.S. mail or hand delivery on the three commenting parties, all parties in CC Docket 96-128, and other persons listed below.


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